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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAEL SACKS

Appeal 2007-3083
Application 10/615,967
Technology Center 3600

DECIDED: January 15, 2008

Before TONI R. SCHEINER, LORA M. GREEN, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

SCHEINER, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 1-18, 21, and 22, all the claims remaining in the application. The claims stand rejected as obvious over the prior art. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

“The landscape edging strips of the present invention are made by co-extruding two or more materials together to form an edging strip having one or more interior longitudinally disposed channels that are adapt[ed] for receiving a connector so as to connect . . . adjacent strip[s] to form a somewhat continuous strip of landscape edging” (Spec. 8: 3-7). The “connector comprises a sleeve portion having an internal body member with one or more extending portions that are configured to be received in the channels at the ends of two adjoining edging strips, which are received in the sleeve portion” (Spec. 9: 2-5).

Claim 1 is representative, and reads as follows:

1. A landscape edging system, comprising:
an edging strip having a top surface, a bottom surface, a first end and a second end, said edging strip having a relatively thin shell layer disposed around a core layer, said core layer having one or more longitudinal channels disposed therein, each of said channels having a channel wall; and
a connector having a channel-shaped sleeve portion with an open first end and an open second end, said open first end and said open second end configured to receive said first end of said edging strip or said second end of said edging strip in said sleeve portion, said sleeve portion having an internal body member disposed therein, said internal body member having one or more extending portions thereon, each of said one or more extending portions configured to be received in one of said channels of said edging strip.

The Examiner relies on the following references:

Lemelson	US 3,933,311	Jan. 20, 1976
Walsh	US 4,820,469	Apr. 11, 1989
Beladakis	US 5,715,628	Feb. 10, 1998
Danna	US 6,108,969	Aug. 29, 2000

Wüster	US 6,389,742 B1	May 21, 2002
Gruber	DE 30 39 971 A1	May 27, 1982

The claims stand rejected as follows:

1. Claims 1, 6, 8, 9, 12, and 17 under 35 U.S.C. § 103(a) as unpatentable over Lemelson and Beladakis.
2. Claims 2 and 21 under 35 U.S.C. § 103(a) as unpatentable over Lemelson, Beladakis, and Gruber.
3. Claims 3-5 and 13-15 under 35 U.S.C. § 103(a) as unpatentable over Lemelson, Beladakis, and Walsh.
4. Claims 7 and 16 under 35 U.S.C. § 103(a) as unpatentable over Lemelson, Beladakis, and Wüster.
5. Claims 10, 11, and 18 under 35 U.S.C. § 103(a) as unpatentable over Lemelson, Beladakis, and Danna.

All of the claims on appeal are directed to a landscape edging system comprising an edging strip with one or more longitudinal channels, and a connector that cooperates with the edging strip, wherein the connector has a sleeve portion with open first and second ends, configured to receive the end of the edging strip, and wherein the sleeve portion has an *internal* body member with one or more extending portions thereon, configured to be received in one or more of the channels of the edging strip.

All five of the rejections depend, at least in part, on Lemelson's disclosure of a coupling member (i.e., a connector) for fencing segments, so we will address the rejections collectively.

Figure 1 of Lemelson is reproduced immediately below:

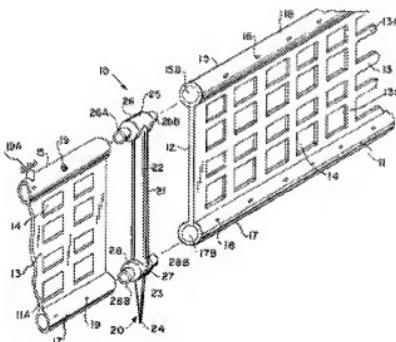


Figure 1 depicts “an isometric view of sections of fencing . . . and a coupling member for two sections thereof” (Lemelson, col. 1, ll. 54-56).

According to the Examiner, Lemelson discloses a landscape edging system which includes edging strips with longitudinal channels 15B and 17B, and

a connector (20 of Figs. 1 and 4) having a channel shaped sleeve portion (25, 26, 22, 27, 28 of Fig. 1; sleeve portion is channel shaped in that [it] fits into channels 15B and 17B) with an internal body member (22 of Figs. 1 and 4) with open first and second ends (in that ends around 28B and 26A of Fig. 1 are open) configured to receive the ends of the edging strip (in that they join with edging strip), the sleeve having several extending portions ((26A, 26B, 28A, and [2]8B of Figs. 1 and 2) thereon, each of the extending portions configured to be received in one of the channels of the edging strip.

(Answer 3.)

The Examiner's interpretation of the configuration of Lemelson's coupling member is incorrect. Lemelson's "tubular formation **26** contain[s] portions **26A** and **26B** which protrude outwardly from opposite sides of the shank **22** and a portion **27** joining shank **22** to said tapered lower portion **23** and also defin[es] a second tubular formation **28**" (Lemelson, col. 2, l. 68 to col. 3, l. 4). These "tubular formations" do not constitute a "sleeve portion," as protrusions **26A**, **26B**, **28A**, and **28B** do not receive the ends of the fencing strips, rather, they are received by, and fit *into* channels **15B** and **17B** on the fencing strips. Moreover, even if central shank **21**, **22** of Lemelson's coupling member **20** can be said to have a sleeve portion that receives the ends of edging or fencing strips, extending portions **26A**, **26B**, **28A**, and **28B** of Lemelson's coupling member (which fit into tubular formations **15** and **17**) are clearly not *internal* to the sleeve portion.

As all of the rejected claims require a connector with a sleeve portion configured to receive the end of an edging strip, wherein the sleeve portion has an *internal* body member with projections configured to be received in the channels of the edging strip, and Lemelson does not teach or suggest a coupling member that meets this limitation, and none of the additional references relied on by the Examiner cure this deficiency, we find that the Examiner has not established an adequate factual basis for rejecting the claims as unpatentable over the prior art.

Appeal 2007-3083
Application 10/615,967

Accordingly, all of the rejections 1-5 under 35 U.S.C. § 103(a) are reversed.

REVERSED

Ssc:

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